

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT

BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et. al.*,

Debtor

PROMESA Title III

No. 17-03283 -LTS

(Jointly Administered)

LUIS A. RIVERA SIACA

Movant,

v.

THE FINANCIAL OVERSIGHT AND MANAGEMENT

BOARD FOR PUERTO RICO

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors

ECF Nos. 21408 and 23145

URGENT MOTION AS TO DECISION ON PENDING MATTERS

TO THE HONORABLE COURT:

COMES NOW, Luis A. Rivera Siaca (“LARS”), through its undersigned counsel, and respectfully states and requests:

1. As it appears from the dockets listed in paragraph five (5) hereof, LARS has two lease agreements with the Department of Education of the Commonwealth of Puerto Rico (the “PRDE”), pursuant to which the PRDE has been occupying and utilizing two properties belonging to LARS necessary for the PRDE’s operations without making any payments to LARS, owing LARS a substantial amount, which continues to increase from day to day, the Financial Oversight

and Management Board for Puerto Rico (the “Board”) averring that the two leases are unenforceable because they were executed without its prior review policy established under PROMESA Section 204(b)(2) (the “Policy”) and has not authorized the PRDE to pay LARS for that reason.

2. The first lease agreement consists of non-residential unexpired lease contract number 081-2021, object of a motion filed on July 1, 2022 for an order directing the PRDE, as lessee, to comply with the payment of post-petition rent due LARS, as lessor, regarding a 123,106.55 square feet building, including floors 1-5 where hundreds of employees work and where the following PRDE’s offices are located, Employee Assistance Program, Distribution of time State Agency for Approval of Post-Secondary Occupational and Technical Education Programs and Public Institutions, Teacher Career Office, Office of Controlled Substances, Undersecretary of Payroll Administration, Office of Collective Agreements, Recruitment Office, Teaching File, Assistant Secretary for Human resources, Office for Teachers’ Certifications, Rock Solid, Classification and Redistribution, Office of the Comptroller, Accountability and Assessment Program Regional Office, Special Education Programs, School Management, School Transportation, Psychology, Social Worker, School Counseling, Unit Exams, Adult Program, Division of Metrics Execution, True North Office, Computer Center, OSIATD Office for the Information System and Teaching Technological Support, Inova Learning Center, Contracts Unit, Classified Files, Personnel Transactions, Regional Superintendent, Administrative office, Post Office, Finance Office, School Transportation Office, School Canteens Office, Adult Education Office, Human Resources Office, Legal Division, Office for Federal Affairs, Office for Provisional Remedies, plus 150 parking spaces, at Calle Calaf Number 34, San Juan, Puerto Rico, (**ECF No. 21408**) (the “First Motion”). This contract was entered into on January 15, 2021, with an expiration date of December 31, 2025, recorded with the Office of the Comptroller of Puerto Rico (“OCPR”) on January 22, 2021(the “First Contract”). As of June 6, 2022, the PRDE owed LARS \$2,259,399.71 for rent under the First Contract and water services, and as of February 28,

2023, \$4,143,386.76 under the First Contract reflecting a significant increase in the amount owed to LARS, which continues to accrue on the daily basis. The PRDE has occupied the premises under the First Contract since 1969 under different lease agreements renewed from time to time.

3. The second non-residential lease agreement number 081-2021-0180 between LARS as lessor and PRDE as lessee, is also object of a motion for payment of administrative rent filed on December 22, 2022 at **ECF No. 23145** (the “Second Motion”), is for a one level 28,431 square feet building with a parking area for 135 vehicles, where the PRDE’s offices for Postal Services, San Juan Region State Agency, Retirement Office, Auction Board, Human Resources, Technology Office, CATAL Time Assistance and License Support Center, Auction Review Office, TAL System of Time, Attendance and License, State Food Agency, Transportation Office and Security Office are located at Calle Juan Calaf Number 33, Puerto Rico. This contract was entered into on May 21, 2021, with an expiration date of June 30, 2026, and was recorded with the OCPR on May 28, 2021 (the “Second Contract”). As of December 31, 2022, the PRDE owed LARS \$420,923.10 in rent under the Second Contract, owing LARS as of February 28, 2023 \$515,070.94, amount which continues to accrue on a daily basis. With the exception of the period from 2007-2009, the PRDE has been occupying the premises under the Second Contract since 1989 pursuant to contracts renewed from time to time. These premises are an annex to those leased under the First Contract and serve as a complement thereto.

4. Therefore, as of February 28, 2023, the PRDE owed LARS \$4,658,457.70 under the two contracts.

5. LARS and the Board’s positions as to LARS’ rights to receive the payments claimed to be owed thereto under the two contracts have been submitted to the Court for decision and remain sub-judice as follows:

(a) As to the First Contract at **ECF Nos. 21408, 21509, 21706, 22338** and **23249**¹

(b) As to the Second Contract at **ECF Nos. 23145, 23210, 23249, 23250**

¹ **ECF No. 23249**, also covers the Second Contract

6. Since the issues raised in the aforesaid dockets are almost identical on the facts and on the law, LARS represents that in passing on the instant motion they should be considered as integral thereto.

7. The simple answer to the Board's position is that the Policy doesn't apply to LARS' Contracts with the PRDE, as discussed in LARS' submissions to this Court, and that even recognizing the extensive powers granted by Congress to the Board by PROMESA, those powers can't be utilized to perpetrate an abuse, as in this case, where the Board has had the *ex-post facto* Policy review of the Contracts since at least May 18, 2022² and where its position in not allowing the PRDE, who is willing to do so, to pay LARS what is owed to him, has resulted in the use and occupancy of LARS' properties by the PRDE without any compensation to LARS, tantamount to an illegal taking in contravention of the Fifth Amendment to the Constitution of the United States.

8. Due to his long-standing relationship with the PRDE and his financial position, LARS has refrained to date from going forward with a request for Writs of Possession of the leased premises or from eviction proceedings against the PRDE, which will create a chaos in PRDE's operations, if not a shutdown, due to the indispensable use of the leased premises by PRDE for its operations, where hundreds of governmental employees work and earn their livelihood. However, LARS can't refrain from doing so any longer.

9. LARS' inequitable position is underscored by having learned after the fact of the dispute regarding the process resulting in the execution of the Contracts, entirely prepared by PRDE with no responsibility on LARS' part or involvement in the internal governmental affairs. LARS followed every notification and instruction from PRDE in the process of executing the Contracts and can't be made responsible for any governmental errors or internal controversies relative

² At page three (3) of the Board's objection filed at **ECF No. 23210**, which refers to both Contracts, the Board stated that since May 18, 2022, it has been reviewing the Second Contract "engaged in analysis and correspondence, including several requests for additional information from PRDE, all in an effort to determine the Second Contract's market competitiveness and compliance with Puerto Rico contracting law and the 2022 Commonwealth Fiscal Plan. During such review, the Board identified irregularities with respect to PRDE's procurement process with LARS and overall lack of competitive procurement process involving the Second Contract". The same rationale applies to the First Contract.

thereto. There is no justification for PRDE's failing to pay LARS what is due under the Contracts.

10. LARS has bent over backwards in attempting to resolve the issues at bench without disrupting Puerto Rico's educational system and its goal of helping the citizens of Puerto Rico navigate life and contribute to our society by becoming better citizens, not only by the forwarding of unsuccessful correspondence and requests for meetings not only to the PRDE, but to the Board and its counsel.

11. The only reaction from the PRDE has been the submission of a draft of an amendment to the First Contract proposing for LARS to relinquish his constitutional rights by agreeing to its termination on December 31, 2022, with no response to LARS' inquiry as to the reason therefor, and the forwarding on December 8, 2022 of a formal invitation for bids number SF(OC)2023-04 as to the administrative offices object of the two Contracts, with a pre-bid meeting for December 14, 2022, only attended by LARS' representatives, January 18, 2023, as the bar date for submission of bids, with LARS being the only bidder, with the opening of bids also on January 18, 2023, as to which process LARS has not heard anything further, notwithstanding his efforts to obtain information in reference thereto.

12. In accordance to Article 8 of Section 73.17 of Puerto Rico's General Services Administration's Uniform Regulation 9230 of November 18, 2020 when an officer of only one bidder is received, the Auction Board can accept the same provided that it adjusts to the specifications and the price is competitive and comparable to that prevailing in the market, and also that its terms can be negotiated. LARS' requests to the Auction Board for action on his formal bid have been ignored.

13. There is nothing else LARS can do, other than request the resolution by the Court of the pending matters in this case, in view of the silence of the PRDE, the Board and the Auction Board, as to his quagmire or proceed with eviction proceedings against the PRDE with the resulting chaos in its operations, as to which to date he has restrained from doing so but can no longer continue to financially do so.

WHEREFORE, it is respectfully requested that a prompt decision as to the pending controversies between LARS and the Board be entered by the Court.

CERTIFICATE OF SERVICE: I hereby certify that on this same date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all ECF participants.

San Juan, Puerto Rico this 17th day of March 2023

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